

IN THE MATTER OF THE POLICE ACT, R.S.B.C. 1996 C. 367

AND

IN THE MATTER OF A REVIEW OF ALLEGATIONS OF MISCONDUCT AGAINST

Constable [REDACTED] [REDACTED]

NOTICE OF ADJUDICATOR'S DECISION

To: Mr. [REDACTED] and [REDACTED] (Complainant)
c/o Ms. [REDACTED] and [REDACTED]

And to: Constable [REDACTED] [REDACTED] (Member)
c/o Vancouver Police Department
Professional Standards Section

And to: [REDACTED] [REDACTED] (External Discipline Authority)
c/o Delta Police Department
Professional Standards Section

And to: Chief Constable Adam Palmer
c/o Vancouver Police Department
Professional Standards Section

And to: His Worship Mayor Kennedy Stewart
Chair, c/o Vancouver Police Board

AND TO: Mr. Clayton Pecknold
Police Complaint Commissioner

Introduction

This is a review under section 117 of the *Police Act*, R.S.B.C. 1996, c. 367, of a complaint of misconduct against Constable [REDACTED] [REDACTED] of the Vancouver Police Department. I have been appointed, as a retired judge, to conduct the review.

The complaint that is the subject matter of this review arises out of the interactions of Constable [REDACTED] and another officer with Mr. [REDACTED] shortly after 10:00 pm on June 30, 2018, in front of the [REDACTED] at [REDACTED] [REDACTED] [REDACTED] in Vancouver, British Columbia. This location is in an area known as the Downtown East Side of Vancouver (DTES). Mr. [REDACTED] says that he was smoking a marijuana

cigarette when the officers approached him and made him throw it away. He says they lectured him about marijuana being illegal and questioned him in a manner that he found condescending and demeaning. He feels that the officers were unfairly and arbitrarily targeting him and that they were insensitive to the needs of residents of the DTES. He feels that the officers were creating barriers to harm reduction.

Background

The complaint of Mr. [REDACTED] is one of sixteen complaints from people living or working in the DTES that were referred to the Office of the Police Complaint Commissioner (OPCC) by the [REDACTED] [REDACTED] on May 17, 2019. [REDACTED] requested that the sixteen complaints be consolidated for a systematic review due to the alleged similarity of the incidents and the involvement of some of the same officers.

Some of the complaints were brought out of time, but the OPCC granted an extension pursuant to subsection 79(2) of the *Police Act* for the complaints that had occurred more than twelve months prior. The OPCC determined that all sixteen complaints were admissible under subsection 83(2) and identified the potential misconduct associated with each of the complaints.

On August 14, 2019, the OPCC appointed [REDACTED], [REDACTED] of the Delta Police Department, as the External Discipline Authority and the New Westminster Police Department's Professional Standards Unit as the Investigator for each of the individual complaints.

On December 20, 2019, the OPCC approved a request pursuant to subsection 158(2) of the *Police Act*, that the "group complaint" was suitable for mediation. Retired Judge [REDACTED] was appointed mediator, and all complaint investigations were suspended. There was some delay caused by the Covid-19 pandemic, but on January 18, 2021, the mediator advised that he was unable to resolve the matter, and on January 27, 2021, the investigations were resumed pursuant to Part 11, Division 3 of the *Police Act*.

On May 31, 2021, [REDACTED] formally requested that the complaints "proceed as a 'group complaint' through the investigative process and beyond." The OPCC declined that request on June 30, 2021, noting that the *Administrative Tribunals Act* provisions enabling tribunals to make their own rules of practice and procedure had not been made applicable to disciplinary processes under Part 11 of the *Police Act*, and that Part 11 does not authorize the Police Complaint Commissioner to consolidate investigations and Discipline Proceedings.

Accordingly, the matter before me is the complaint of Mr. [REDACTED]

The Complaint of [REDACTED] [REDACTED]

The signed complaint of Mr. [REDACTED] dated September 25, 2018, reads as follows:

On the evening of June 30, 2018 at around 10 pm (perhaps 10:15 pm) I was standing in the doorway of the [REDACTED] at [REDACTED]. I was smoking a joint. I was then approached by two officers, one being 3066.

I use marijuana for pain relief. It is available from harm reduction outlets in the Downtown Eastside such as the Real Compassion Society. I am not allowed to smoke in my building and so in order to use marijuana for pain relief I went downstairs onto the street to do so. The streets did not have very many people around and I felt I was being as discreet as possible.

I told the police officers I was trying to be as discreet as possible. They made me throw out my joint. They lectured me about marijuana being illegal. I did not feel that I could explain myself to them. I found them condescending. They asked me if I was in a gang and whether I had tattoos. They gave no reason for asking me those questions. I found those questions demeaning. I was not involved in any other activities that might be considered criminal or otherwise illegal.

I felt the officers involved were creating obstacles to harm reduction.

When dispensaries were set up in the Downtown Eastside the Vancouver Police Department stated publicly that they would not go after them. I am concerned that the police are now targeting the users of these dispensaries. The police do not appear to be acting against established dispensaries, but instead appear to be targeting individual people. I feel this is unfair and that I am being singled out arbitrarily.

The police should have left me alone, and I think it is important for people to be able to consume marijuana and other harm reduction substances in peace. I would like to see a designated area in the Downtown Eastside where I can consume marijuana free of hassles.

I would like the officer involved to be reassigned, and to receive harm reduction and sensitivity training. He did not appear to be aware of the needs of persons who live on the Downtown Eastside.

What Constitutes Misconduct

"Misconduct" is defined in subsection 77(1) of the *Police Act* as including a disciplinary breach of public trust under subsection (3). For present purposes, subsections 77(3)(a) and (g) and 77(4) are relevant:

77 (3) Subject to subsection (4), any of the conduct described in the following paragraphs constitutes a disciplinary breach of public trust, when committed by a member:

(a) "abuse of authority", which is oppressive conduct towards a member of the public, including, without limitation,

(i) intentionally or recklessly making an arrest without good and sufficient cause,

(ii) in the performance, or purported performance, of duties, intentionally or recklessly

(A) using unnecessary force on any person, or

(B) detaining or searching any person without good and sufficient cause, or

(iii) when on duty, or off duty but in uniform, using profane, abusive or insulting language to any person including, without limitation, language that tends to demean or show disrespect to the person on the basis of that person's race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or economic and social status;

...

(g) "discourtesy", which is failing to behave with courtesy due in the circumstances towards a member of the public in the performance of duties as a member;

...

(4) It is not a disciplinary breach of public trust for a member to engage in conduct that is necessary in the proper performance of authorized police work.

Investigation of Mr. [REDACTED] Complaint And The Discipline Authority Decision

Mr. [REDACTED] complaint was investigated and the Investigator's Final Investigation Report (FIR) was provided to the Discipline Authority on December 8, 2021.

On December 22, 2021, the Discipline Authority issued a decision under section 112 that the allegation of Abuse of Authority under subsection 77 (3)(a) of the *Police Act* did not appear to be substantiated and that Constable [REDACTED] was misidentified and was not present during the incident. The Discipline Authority also determined that there was no evidence Constable [REDACTED] "used profane, abusive, or insulting language that tended to demean or show disrespect" to the Complainant on any of the grounds found under subsection 77(3)(a)(iii) of the *Police Act*. The Discipline Authority concluded the interaction was essentially a disagreement over drug enforcement policy that would not amount to oppressive conduct.

Appointment of Retired Judge

On January 6, 2022, [REDACTED] made a request to the OPCC on behalf of Mr. [REDACTED] for a review under section 117 of the *Police Act*.

The Police Complaint Commissioner reviewed the Discipline Authority's decision and agreed that Constable [REDACTED] had been misidentified. With respect to Constable [REDACTED] however, the Police Complaint Commissioner considered that the Discipline Authority took too narrow a view of the interaction, particularly evidence that the detention may have been carried out for purposes other than the enforcement of the *Controlled Drugs and Substances Act* (CDSA) and evidence that the interaction was oppressive given Mr. [REDACTED] statement that he felt "belittled." He referred specifically to Constable [REDACTED] statement that "there was lots of people in Downtown Eastside that smoke marijuana and they wouldn't be stopped but it would be a way that we could stop them or I would stop them if I felt the need to."

Accordingly, the OPCC appointed me, as a retired judge, to conduct a review under section 117 of the *Police Act*.

The Nature And Scope of a Section 117 Review

The appointment of a retired judge and the nature and scope of a review are governed by section 117 of the *Police Act*.

Subsection 117(1) provides that the retired judge is to do the following:

- (a) review the investigating officer's report referred to in section 112 or 116, as the case may be, and the evidence and records referenced in that report;
- (b) make her or his own decision on the matter;
- (c) if subsection (9) of this section applies, exercise the powers and perform the duties of discipline authority in respect of the matter for the purposes of this Division.

Subsection 117(7) stipulates that the review is to be completed and the parties notified within ten business days, and subsections 117(8)-(11) specify the nature and effect of the review decision.

Specifically, subsections 117(8)-(11) provide:

117 (8) Notification under subsection (7) must include

- (a) a description of the complaint, if any, and any conduct of concern,
 - (b) a statement of a complainant's right to make submissions under section 113 [*complainant's right to make submissions*],
 - (c) a list or description of each allegation of misconduct considered by the retired judge,
 - (d) if subsection (9) applies, the retired judge's determination as to the following:
 - (i) whether or not, in relation to each allegation of misconduct considered by the retired judge, the evidence referenced in the report appears sufficient to substantiate the allegation and require the taking of disciplinary or corrective measures;
 - (ii) whether or not a prehearing conference will be offered to the member or former member under section 120 [*prehearing conference*];
 - (iii) the range of disciplinary or corrective measures being considered by the retired judge in the case, and
 - (e) if subsection (10) applies, a statement that includes the effect of subsection (11).
- (9) If, on review of the investigating officer's reports and the evidence and records referenced in them, the retired judge appointed considers that the conduct of the member or former

member appears to constitute misconduct, the retired judge becomes the discipline authority in respect of the matter and must convene a discipline proceeding, unless section 120 (16) *[prehearing conference]* applies.

(10) If, on review of the report and the evidence and records referenced in it, the retired judge decides that the conduct of the member or former member does not constitute misconduct, the retired judge must include that decision, with reasons, in the notification under subsection (7).

(11) The retired judge's decision under subsection (10)

- (a) is not open to question or review by a court on any ground, and
- (b) is final and conclusive.

Some guidance on the interpretation of section 117 may be found in *Scott v. British Columbia (the Police Complaint Commissioner)*, 2016 BCSC 1970. There, Justice Affleck remarked at para. [39]:

[39] Section 117 of the *Police Act* is unfortunately worded in some respects. On one possible interpretation a retired judge appointed pursuant to the *Act* is directed to reach conclusions about the conduct of a member of a police force before a disciplinary hearing has been conducted by the retired judge in respect of that conduct. I do not accept the legislature intended such an approach to be taken. If that was the appropriate interpretation it would inevitably raise a serious issue of an apprehension of bias when the retired judge made preliminary findings adverse to the petitioner and was then required to conduct a disciplinary hearing. I conclude that the retired Judge adopted an interpretation which has now led to that unfortunate outcome.

Those remarks were in relation to the interpretation of subsection 117(9), which is worded somewhat differently from subsection 117(10).

In short, my task on this section 117 review is to review the Final Investigation Report and the evidence and records referenced therein, and make my own decision of whether the member's conduct appears to constitute misconduct under subsection 117(9) or whether the conduct of the member does not constitute misconduct under subsection 117(10).

My review is not an appeal from any previous determination. I do not hear witnesses nor do I consider any additional evidence or submissions beyond what is referenced in the Final Investigation Report.

The Final Investigation Report

I have reviewed the entire Final Investigation Report and the evidence and records referenced in it.

Four people were interviewed as part of the investigation: Mr. [REDACTED], Constable [REDACTED], Constable [REDACTED] and Sergeant [REDACTED]. It soon became apparent that Constable [REDACTED] had been misidentified as the second officer present at the time of the incident. Rather, the second officer was apparently Sergeant [REDACTED].

In his interview, Mr. [REDACTED] described the incident in much the same way as in his written complaint. He said he left his place and went outside to smoke a joint. He was at the front door of the [REDACTED], when two officers came around the corner and asked him to put out his joint. Mr. [REDACTED] had no identification on him, and the officers asked for his information. They asked him if he was in a gang or if he had any tattoos. The officers asked him if he knew that marijuana was still illegal. He said that [REDACTED], that is, Constable [REDACTED] patted him down and asked if he had any other weed on him.

Mr. [REDACTED] said he had been living in the DTES for months prior, and that he has used marijuana for pain relief for 30 years. He said he was trying to be discreet because he did not want to get into people's faces and he did not want any harassment from anyone, including police. He said he thought the officer's question if he was in a gang was dumb and over the top.

During his interview, Mr. [REDACTED] commented that VPD said they were not going to go after people who had small amounts of marijuana, and he felt the officers were ignoring the work in the DTES around harm reduction. He believed he was targeted because he was wearing a hoodie and hoodies have a criminal attachment to them. He said that at the time there were about 200 dispensaries in Vancouver, and he believed police were going after people leaving the dispensaries and not the dispensaries themselves.

Mr. [REDACTED] said he had not dealt with either of the officers in the past. He believed that the officers were capitalizing on the fact that marijuana was still illegal. He said officers should have training about chronic pain issues. He said he felt that the officers were belittling him. He said things are harder for him pain-wise if he loses his marijuana. When he is not using marijuana he has knee and back pain. He said he uses marijuana every day to manage his pain, usually in the morning and the evening, sometimes for sleeping.

In his interview on October 18, 2021, Constable [REDACTED] said this was a minor encounter and he did not remember very much of the June 30, 2018 incident. His recollection is based largely on the notes he made at the time, which stated the following:

- i. Male's name and DOB, [REDACTED] [REDACTED]
- ii. Address
- iii. "smoking weed in public, very rude, challenging authority, difficult to deal with, said we were rude, but he was upset. I was stern because of his aggressive manner"

Constable [REDACTED] said that he was working in the DTES with Sergeant [REDACTED] on the night in question. They were walking and talking in the [REDACTED] of [REDACTED] [REDACTED] Mr. [REDACTED] who was alone on the sidewalk, blew his marijuana smoke at them, and that is when they checked him. He believed that Sergeant [REDACTED] told Mr. [REDACTED] he was under arrest and not free to go. Mr. [REDACTED] had no identification on him, and dispatch had no information on him, so Constable [REDACTED] tried to identify him by other means, such as scars, marks, or tattoos.

Constable [REDACTED] said that marijuana was illegal at the time, although it was not always enforced. He said he believed that Mr. [REDACTED] wanted a reaction from police and that was why he blew the smoke at them.

Constable [REDACTED] wrote in his notes that he was stern with Mr. [REDACTED]. He advised him that marijuana was still illegal and that if he wanted to smoke marijuana, he should do it in a more discreet way. Mr. [REDACTED] told him that he smoked for pain relief, but then also mentioned harm reduction.

Constable [REDACTED] denied being condescending to Mr. [REDACTED]. He did not lecture him, but rather educated him on marijuana use. He said he does not go out looking for people smoking marijuana, but Mr. [REDACTED] sought him out. He said he is not sure what Mr. [REDACTED] was talking about when he referenced gangs, but says that at the time he still needed to identify the person they were speaking to, and that it wasn't meant to be demeaning.

Constable [REDACTED] denied saying anything to Mr. [REDACTED] about dispensaries. He said Mr. [REDACTED] was not a targeted user. He has seized a lot of drugs from people. Mr. [REDACTED] was not targeted, nor was he charged. He would not have engaged with him except for the fact that he was smoking marijuana. He did not recall Mr. [REDACTED] telling him that he used marijuana for pain relief.

Constable [REDACTED] said he did not often stop people for smoking marijuana; there were a lot of people smoking marijuana in the DTES, and they wouldn't always be stopped. However, it would be a way to stop someone if he felt that he needed to identify or arrest someone. It would provide the authority to stop and check a regular (person they deal with on a regular basis) to see if they had warrants, or if there was anything else of

interest. When asked if any of his communication with Mr. [REDACTED] was offensive or oppressive, Constable [REDACTED] said he did not remember any of that. He said he did not try to intimidate Mr. [REDACTED]. He had not dealt with or seen Mr. [REDACTED] before this incident, and has not dealt with him since.

Constable [REDACTED] said he was very good at building rapport with the people on the streets and that was his training. He made relationships with people down there and had done his best to try and help people down there. If he felt he could have a conversation with someone down there, he would, and would try to educate them and himself. He said his training is always considered during his police work.

Sergeant [REDACTED] in his interview, said that he had no recollection of this incident. He had no recollection of Constable [REDACTED] actions or communication being inappropriate or oppressive.

The Final Investigation Report discloses that Constable [REDACTED] has received the following relevant training:

- a. Bias Free Policing (2014);
- b. Diversity Education (2014);
- c. Dealing with EDP (2014);
- d. Crisis Intervention/De-escalation Training (2016);
- e. Community Awareness & Interactions (2017);
- f. Drug Expert Evidence Course – Level 1 (2018);
- g. Fair and Impartial Policing (2018);
- h. Acting Supervisor Program (2019);
- i. VPD Supervisor's Course Module 3 (2019);
- j. Trauma Informed Practice (2020);
- k. Indigenous Awareness 101: Promoting Culturally Safe Practices.

Detective [REDACTED] advised that VPD does not have any directives, policies or training specific to the DTES, nor does it have any policies specific to arrests under the *Controlled Drugs and Substances Act*.

Conduct of Concern and Allegations of Misconduct

The conduct of concern is that set out in Mr. [REDACTED] signed complaint and in his interview during the investigation. He says that he should have been left alone and there should have been no police intervention when he openly smoked marijuana in a

public place. He feels that he was unfairly targeted by the police. As well, he complains about the nature of the intervention, alleging that Constable [REDACTED] asked unnecessary questions, made him throw out his joint of marijuana, and made him feel belittled. He feels Constable [REDACTED] conduct was inconsistent with the VPD's stance on harm reduction.

The misconduct alleged is that Constable [REDACTED] actions were an abuse of authority contrary to subsection 77(3)(a) of the *Police Act*, and that he was discourteous contrary to subsection 77(3)(g) of the *Police Act*. These are the allegations of misconduct that I shall consider.

I have no reason to doubt that both Mr. [REDACTED] and Constable [REDACTED] were trying to be truthful throughout the investigation, but the accuracy of their recollections may understandably have been impaired by the number of years that went by between the time of the incident and the time of their interviews. In most respects, their accounts of the facts are compatible with each other, although their interpretation of events and feelings about them may differ.

Analysis and Decision

The first area of concern is whether Constable [REDACTED] is guilty of misconduct for having intervened with Mr. [REDACTED] at all, or whether, as Mr. [REDACTED] says, the police should simply have left him alone.

The context is that at the time of this intervention, possession of marijuana was a criminal offence, contrary to the provisions of the *CDSA*, although it was widely anticipated that the federal government would soon decriminalize simple possession. That, however, did not occur until October 17, 2018, more than three months after this incident.

While in certain circumstances set out in regulations under the *CDSA*, possession of marijuana for medical purposes may have been permitted, something more was required than a simple assertion that the person was using it for pain relief. In this case, Mr. [REDACTED] provided no evidence, either at the time of the incident or later during the investigation, that he had lawfully obtained the marijuana from a hospital or from a licenced producer or from a health care practitioner in the course of treatment for a medical condition. There is no evidence that he was in possession of marijuana in circumstances that would have made his possession lawful according to the regulations in force at the time of the incident.

Section 495 of the *Criminal Code* provides:

495 (1) A peace officer may arrest without warrant

- (a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;
- (b) a person whom he finds committing a criminal offence; or
- (c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

(2) A peace officer shall not arrest a person without warrant for

- (a) an indictable offence mentioned in section 553,
- (b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction, or
- (c) an offence punishable on summary conviction,

in any case where

- (d) he believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to
 - (i) establish the identity of the person,
 - (ii) secure or preserve evidence of or relating to the offence, or
 - (iii) prevent the continuation or repetition of the offence or the commission of another offence,

may be satisfied without so arresting the person, and

- (e) he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend court in order to be dealt with according to law.

(3) Notwithstanding subsection (2), a peace officer acting under subsection (1) is deemed to be acting lawfully and in the execution of his duty for the purposes of

- (a) any proceedings under this or any other Act of Parliament; and

(b) any other proceedings, unless in any such proceedings it is alleged and established by the person making the allegation that the peace officer did not comply with the requirements of subsection (2).

I have reproduced section 495 in full because it illustrates that the decision whether to arrest a person without warrant is connected with the necessity of establishing the person's identity and with the need to prevent a continuation of the offence.

In this case, it is beyond question that Constable [REDACTED] found Mr. [REDACTED] committing the criminal offence of possessing marijuana contrary to the CDSA, and he therefore had legal grounds to arrest him without warrant. The decision whether to proceed with the arrest, however, would be affected by the question of whether Constable [REDACTED] could establish Mr. [REDACTED] identity.

It was therefore lawful for Constable [REDACTED] to detain Mr. [REDACTED] and to take appropriate steps to establish his identity. These appropriate steps would include asking for identification, and ascertaining if he had any identifying marks or other identifying features.

Subsection 495(2)(d)(ii) of the *Criminal Code* also makes clear that a relevant consideration is whether an arrest is necessary to prevent the continuation or repetition of the offence or the commission of another offence. For these reasons, it was both lawful and reasonable for Constable [REDACTED] to take steps to assess the level of risk posed by releasing Mr. [REDACTED] after the initial detention. It was also lawful and reasonable for the officers to require Mr. [REDACTED] to dispose of his marijuana joint, in order to prevent a continuation of the offence.

The point has been raised that although possession of marijuana was illegal at the time of this incident, police in Vancouver were generally not vigorously enforcing that law. Mr. [REDACTED] feels that he was unfairly and arbitrarily singled out, and the suggestion is that this would constitute an abuse of authority contrary to subsection 77(3)(a) of the *Police Act*.

Although Mr. [REDACTED] may subjectively feel that he was unfairly singled out, the evidence does not support his suspicion. Constable [REDACTED] said that Mr. [REDACTED] blew smoke at the officers as they were passing by. It seems likely that that is what happened, and that is why Constable [REDACTED] told him that if he was going to smoke marijuana, he should be more discreet. As Constable [REDACTED] put it, he does not go out looking for people smoking marijuana, but in this case Mr. [REDACTED] drew the officers' attention to his illegal activity. In the circumstances, it was not unfair or arbitrary or abusive for the officers to detain Mr. [REDACTED] briefly and to have him dispose of his marijuana.

In making the present appointment for a section 117 review, the Police Complaint Commissioner said this:

While it was open to the Discipline Authority to conclude that this detention was authorized at law, there is evidence to suggest that it was done for purposes unrelated to the enforcement of the *Controlled Drugs and Substances Act* (CDSA). There was evidence available to the Discipline Authority to conclude that the interaction was oppressive given the Complainant's description that he felt "belittled," the contemporaneous notes of the member characterizing the interaction and the statements of the member during his interview with respect to marijuana enforcement. Specifically, the member stated that "there was lots of people in Downtown Eastside that smoke marijuana and they wouldn't be stopped but it would be a way that we could stop them or I would stop them if I felt the need to." The evidentiary record also has other similar statements with respect to the members use of the authorities under the CDSA.

Having reviewed the Final Investigation Report and the evidence and materials referred to in it, I have come to the decision that Mr. [REDACTED] was not detained for purposes unrelated to the enforcement of the CDSA. The officers had never dealt with Mr. [REDACTED] before. There is nothing to suggest that they had any grudge against him. There is no evidence of any racial profiling or other abuse of authority. If Mr. [REDACTED] had been discreet in his use of marijuana, the officers would not have interacted with him on that evening.

Having decided that the brief detention of Mr. [REDACTED] was not oppressive or an abuse of authority contrary to subsection 77(3)(a) of the *Police Act*, I turn to the issue of whether the manner in which he was dealt with was oppressive or abusive under subsection 77(3)(a) or discourteous under subsection 77(3)(g) of the *Police Act*.

As set out above, I have decided that questioning Mr. [REDACTED] about his identity, looking for identifying marks such as tattoos, and requiring him to dispose of his marijuana joint, was reasonable and not abusive or oppressive. To ask Mr. [REDACTED] whether he belonged to a gang was perhaps an unnecessary question, but it was within the range of the reasonable exercise of discretion.

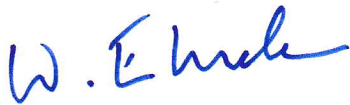
Despite Mr. [REDACTED] complaint that he felt belittled, there is no evidence that Constable [REDACTED] used profane, abusive or insulting language. Although Mr. [REDACTED] may subjectively have felt that the officer was being condescending, Constable [REDACTED] was quite appropriately educating him about the fact that marijuana possession was illegal, and that he should be more discreet.

Clearly Mr. [REDACTED] has views about decriminalization of drug possession, about police enforcement policy, and about harm reduction initiatives, but there is no evidence that Constable [REDACTED] acted contrary to the existing law or to any existing VPD policy.

Pursuant to subsection 117(10) of the *Police Act*, with respect to all of the complaints and allegations of misconduct, upon my review of the Final Investigation Report and the evidence and records referenced in it, it is my decision that the conduct of Constable [REDACTED] does not constitute misconduct.

Pursuant to subsection 117(11) of the *Police Act*, this decision is not open to question or review by a court on any ground and is final and conclusive.

Dated at Vancouver, British Columbia this 17th day of February, 2022.



Hon. William Ehrcke,
Retired Judge of the Supreme Court of British Columbia, Adjudicator